

EXHIBIT 1

**REDACTED VERSION
OF DOCUMENT
SOUGHT TO BE SEALED**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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WAYMO LLC,

Plaintiff,

vs.

No. 3:17-cv-00939-WHA

UBER TECHNOLOGIES, INC.;

OTTOMOTTO LLC; OTTO TRUCKING,
INC.,

Defendants.

_____/

HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF KEVIN FAULKNER

VOLUME II

SAN FRANCISCO, CALIFORNIA

THURSDAY, SEPTEMBER 28, 2017

REPORTED BY:

ANDREA M. IGNACIO, CSR, RPR, CRR, CCRR, CLR ~

CSR LICENSE NO. 9830

JOB NO. 2714984

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1 your investigation at a high level. 09:25

2 How would you -- how would you describe the 09:25

3 scope of what you were asked to do? 09:25

4 A The initial scope was to find where 09:26

5 information taken by Anthony Levandowski -- where it 09:26

6 ended up on Uber's systems. 09:26

7 We started with the assumption that he did, 09:26

8 in fact, take things that were alleged, you know, by 09:26

9 Waymo in this case. We assumed that that information 09:26

10 would have made it onto some of Uber's systems and 09:26

11 would have been used. 09:26

12 And we began the search to identify, you 09:26

13 know, where that data exists, expecting to find a kind 09:26

14 of first hit, first place that we identify it, and 09:26

15 then spiderweb out from there to find from there, 09:26

16 where did it go? Who else accessed it? What did they 09:26

17 do with it? Where did this information go? Each step 09:26

18 of the way. 09:26

19 And then, you know, ultimately, in our 09:26

20 search, we did not find the data at Uber. 09:26

21 Q You just said that the initial scope was to 09:26

22 find where information taken by Anthony Levandowski -- 09:27

23 where it ended up on Uber's systems. 09:27

24 What do you mean exactly, precisely by 09:27

25 "information taken by Anthony Levandowski"? 09:27

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1 A Yes. 09:36

2 Q So Anthony Levandowski provided some of the 09:36
3 keywords that were used to search Uber for Waymo's 09:36
4 confidential information; correct? 09:36

5 MS. RAY: Objection; form. 09:36

6 THE WITNESS: Yes, he provided some of the 09:36
7 keywords. 09:36

8 MR. NARDINELLI: Okay. 09:36

9 Q So, high level, I want to talk about how 09:36
10 Stroz went about searching. And the way I'd like to 09:36
11 organize this is to go source by source of the 09:36
12 materials that Stroz searched. 09:36

13 A Okay. 09:36

14 Q We can start with categories. So how about I 09:36
15 have you make the list instead of me. 09:36

16 Can you tell me, on a category-by-category 09:36
17 level, all of the sources that Stroz searched to 09:36
18 locate confidential information at Uber? 09:36

19 A Sure. I believe they're all documented in my 09:36
20 report, but we can certainly talk through it. Let's 09:37
21 see where to start. 09:37

22 I guess, at a high level, categories of 09:37
23 information would be PCs, personal computers, 09:37
24 including laptops and desktops. Mobile devices, such 09:37
25 as phones and tablets. Central servers, which take on 09:37

1 a variety of different forms, which I'd be happy to 09:37
2 talk through. Cloud-based storage, such as Google 09:37
3 Drive and Google e-mail, which are systems used by 09:37
4 Uber. And also log information from a number of 09:37
5 different sources. 09:37

6 Q Anything else? 09:38

7 A I think, at a high level, that's it. 09:38

8 Q So I've got, at a high level, that Stroz 09:38
9 searched Google Drive; correct? 09:38

10 A Yes. 09:38

11 Q Searched employees' e-mails; right? 09:38

12 A Yes. 09:38

13 Q Central servers? 09:38

14 A Yes. 09:38

15 Q Mobile devices belonging to employees? 09:38

16 A Yes. 09:38

17 Q Were those personal devices or Uber-issued 09:38
18 mobile devices? 09:38

19 A I believe they were all personal. 09:38

20 Q And also personal computers, including 09:38
21 desktops and laptops? 09:38

22 A Yes, mainly -- just -- just to clarify the 09:38
23 word "personal" in that context, meaning computers 09:38
24 owned and operated by Uber, provided to their 09:38
25 employees. I believe there were some limited personal 09:38

1 Q And you list those 60 employees on page 9? 10:37

2 A Correct. 10:37

3 Q Are you aware of an accounting log that Uber 10:37

4 has compiled in this litigation in response to a court 10:37

5 order that lists every person at Uber that has spoken 10:37

6 with Anthony Levandowski about LiDAR? 10:37

7 MS. RAY: Objection; form. 10:37

8 THE WITNESS: I'm not sure. I'm aware of a 10:37

9 log that Uber and their counsel put together that 10:37

10 lists -- I thought it was just all discussions on 10:37

11 LiDAR, the difference being -- I think you said 10:37

12 discussions with Levandowski. I thought it was 10:37

13 broader than that. 10:37

14 But I've -- I've seen it. I wasn't involved 10:37

15 in creating it. I don't know exactly what it contains 10:38

16 or if we're even talking about the same document. 10:38

17 MR. NARDINELLI: Q. This log that you're 10:38

18 referring to, did you review that log to see if there 10:38

19 were any names on that log that were not captured by 10:38

20 the 60 that you've listed here at page 9? 10:38

21 A I think we -- we did review that log. There 10:38

22 were some names not captured. But again, a lot of 10:38

23 those were, you know, things like the folks involved 10:38

24 with the deal, you know, the kind of mergers and 10:38

25 acquisitions team that had acquired Otto, but were not 10:38

1 A It's my understanding that he is more of a 10:40
2 management level, you know, former engineer; that he's 10:40
3 not involved in the actual designs or using the 10:40
4 designs, but rather just heads up a team of people who 10:40
5 do. 10:40

6 Q You actually have Eric Meyhofer on your 10:40
7 name -- on your list of LiDAR-related custodians. I 10:40
8 messed up my outline. I thought that he wasn't on 10:40
9 there. We can forget about Mr. Meyhofer. 10:40

10 A I see him. 10:40

11 Q See him at No. 3? 10:40

12 A I see him. I do. 10:40

13 And again, either way, the other names that 10:40
14 you -- you listed, you know, we didn't consider as, 10:40
15 you know, part of this 60 LiDAR custodians, but we 10:40
16 still performed the same searching on any data that we 10:40
17 had from them anyway. 10:40

18 Q "Same searching" meaning searched for file 10:40
19 names, hash values, and keywords; correct? 10:40

20 A Correct, and the fuzzy hashing as well. 10:41

21 Q And the fuzzy hashing. 10:41

22 And when you say "collected," are they listed 10:41
23 in Exhibit 2? 10:41

24 A They are not. Since they were just collected 10:41
25 for discovery purposes, you know, they weren't -- 10:41

1 A Correct. All of those are OCR'd by us. In 13:10
2 addition, Google Drive itself does OCR. And anything 13:10
3 that would be OCR'd there -- well, I guess we would 13:11
4 have OCR'd it again when we got it. But it would 13:11
5 already have text for searching within Google Drive 13:11
6 itself. 13:11

7 Q If you upload a photograph to Google Drive, 13:11
8 Google Drive automatically performs OCR on that 13:11
9 photograph? 13:11

10 A That's my understanding, yeah. 13:11

11 Q I didn't know that. I -- I've seen it do 13:11
12 that with PDFs and certainly for documents, although I 13:11
13 don't know if I have firsthand experience. I didn't 13:11
14 know that it did that for photos. 13:11

15 Are you sure that it does? 13:11

16 A I'm reasonably sure. 13:11

17 Q Once the 66 million files are placed into the 13:11
18 processing tool, you then describe a series of steps 13:11
19 that your team undertook to search those files; 13:11
20 correct? 13:11

21 A Yes. 13:11

22 Q Now, I see four types of searches listed at 13:11
23 the top of page 19. 13:12

24 Do you see those? 13:12

25 A I do. 13:12

1 Q And the four searches are file name match, 13:12
2 hash match, keyword, and fuzzy hash; is that correct? 13:12

3 A Yes. 13:12

4 Q Is this the full description of all four -- 13:12
5 strike that. 13:12

6 Other than these four, did your team do 13:12
7 anything to search the 66 million files? 13:12

8 A I think all the searching that we did could 13:12
9 be categorized as one of these four. I think this is 13:12
10 it. 13:12

11 Q And just help me understand. On the file 13:12
12 name match and the hash match, why is this not 13:12
13 duplicative of what you've already done? 13:12

14 So I thought that you'd already put into the 13:12
15 e-discovery tool all of the file name matches and all 13:12
16 of the hash matches. 13:12

17 A Correct. This would largely be duplicative. 13:12
18 However, this would pick up on some additional things 13:12
19 and supplement that original set. 13:12

20 Obviously, anything that hit in file name or 13:13
21 hash match before the processing phase would be 13:13
22 produced or made available, however that was worked 13:13
23 out. 13:13

24 But anything that, you know, became 13:13
25 searchable only once it went into processing, we also 13:13

1 wanted to make sure was run through the same 13:13
2 procedures. 13:13

3 So things like, you know, attachments to 13:13
4 e-mails or files inside of zip files, compressed 13:13
5 files, you know, anything that the processing engine 13:13
6 could rip apart and separate out to then make, you 13:13
7 know, more available for searching, we wanted to make 13:13
8 sure that that was included in the efforts and 13:13
9 included in the file name and hash match process. 13:13

10 Q And I think it's a similar story with the 13:13
11 keywords; correct? 13:13

12 Meaning that documents were originally 13:13
13 harvested because they matched on file name, hash, or 13:13
14 keyword. But then you additionally ran the same set 13:14
15 of keywords over the documents once they were in the 13:14
16 review database; correct? 13:14

17 A Yes. But with keywords specifically, the, 13:14
18 you know, largest set of data we collected were the 13:14
19 PCs. Those were collected in whole, then harvested 13:14
20 for all user documents without search or restriction 13:14
21 other than by file type. So the keywords would need 13:14
22 to be applied against those that had not been 13:14
23 previously searched. 13:14

24 The ones that had been previously searched, 13:14
25 yes, that's technically duplicative. But, you know, 13:14

1 making sure that we kind of treat all the data as 13:14
2 similarly as possible, and that anything with a 13:14
3 keyword hit is considered is best handled by running 13:14
4 it here, even if it is a second time. 13:14

5 Q So your team harvested user-created files 13:14
6 from the central file servers; correct? 13:14

7 A Yes, yes. I think in -- in some cases we 13:15
8 harvested more than that. If a Uber custodian pointed 13:15
9 to a specific directory and said, "This has useful 13:15
10 stuff in it," I -- I don't know that we would then 13:15
11 filter that down to user-created files. I think we 13:15
12 would just take the whole directory. I'm pretty sure 13:15
13 that's what we did. 13:15

14 Q I appreciate that. And I'm not trying to 13:15
15 falsely imply a limitation. I'm just trying to sort 13:15
16 of get our universe of the user-created files here. 13:15

17 So you imported or processed into the review 13:15
18 database, in addition to other things, the 13:15
19 user-created files that you located on the central 13:15
20 servers; correct? 13:15

21 A We're not to the review database yet. This 13:15
22 is separate. Processing is separate from review. So 13:15
23 those two things are -- are completely separate 13:15
24 databases. 13:16

25 So we processed all the user-created files 13:16

1 I think that the -- the point of doing 13:21
2 four different types of searches, though, is to make 13:21
3 sure any potential deficiencies of any one search are 13:21
4 mitigated by another. 13:21

5 So, in your example, I think the most likely 13:21
6 search that would have hit would have been keywords. 13:21
7 But, in your hypothetical, you said keywords didn't 13:21
8 hit. So then, no, it would not. 13:21

9 But, generally, with the, you know, range of 13:21
10 keywords that we have in this case, you know, it -- 13:21
11 one or more of the different types of searches we did 13:21
12 should hit on materials that came from the 14K-plus 13:22
13 files. 13:22

14 Q So the hash match that you ran was on the 13:22
15 14,000 files themselves, the ones that were downloaded 13:22
16 from the SVN; correct? 13:22

17 MS. RAY: Objection; form. 13:22

18 THE WITNESS: It's of the original 14K and 13:22
19 then the additional documents disclosed by Waymo. I 13:22
20 don't know how to name them each. 13:22

21 MR. NARDINELLI: No, that's fair. 13:22

22 Q We can -- we can use the term 14,000-plus 13:22
23 files as you did in your report. So 14,000 -- 13:22

24 A Okay. 13:22

25 Q -- plus files includes the 14,000 files that 13:22

1 But having a [REDACTED] on this 13:53
2 document from Uber does not make this a stolen 13:53
3 document from Waymo. It may or may not contain, you 13:53
4 know, information from Waymo, but it itself is not a, 13:53
5 you know, version of the stolen documents or a stolen 13:53
6 document itself. 13:53

7 So again, we didn't want to have forensic 13:53
8 investigators and contract reviewers having to, you 13:53
9 know, look side by side at designs and look for 13:53
10 differences and similarities. There's a separate 13:53
11 expert to focus on such things. 13:54

12 MR. NARDINELLI: And I appreciate that. 13:54

13 Q That's what I was getting at is to just make 13:54
14 sure we properly explain what the scope was of your 13:54
15 team's investigation. 13:54

16 Your team's investigation was looking to find 13:54
17 the stolen files themselves? 13:54

18 A Correct, or, you know, modi- -- modified 13:54
19 versions of those files or, you know, anything related 13:54
20 to that. 13:54

21 If someone worked at Waymo and remembered 13:54
22 that there is a [REDACTED], and came to Uber 13:54
23 and made a [REDACTED], our task was not to 13:54
24 find that. We don't know all the different things 13:54
25 that someone might have learned at Waymo or what they 13:54

1 CERTIFICATE OF REPORTER

2
3 I, ANDREA M. IGNACIO, hereby certify that the
4 witness in the foregoing deposition was by me duly
5 sworn to tell the truth, the whole truth, and nothing
6 but the truth in the within-entitled cause;

7 That said deposition was taken in shorthand
8 by me, a disinterested person, at the time and place
9 therein stated, and that the testimony of the said
10 witness was thereafter reduced to typewriting, by
11 computer, under my direction and supervision;

12 That before completion of the deposition,
13 review of the transcript [] was [x] was not
14 requested. If requested, any changes made by the
15 deponent (and provided to the reporter) during the
16 period allowed are appended hereto.

17 I further certify that I am not of counsel or
18 attorney for either or any of the parties to the said
19 deposition, nor in any way interested in the event of
20 this cause, and that I am not related to any of the
21 parties thereto.

22 Dated: September 29, 2017
23
24

25 <%signature%>

ANDREA M. IGNACIO,

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